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October 21, 2016

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106

Dear Ms. Dortch:

On October 20, 2016, Will Johnson, Karen Zacharia, and I from Verizon met with Claude Aiken, legal advisor to Commissioner Clyburn, to discuss the Commission's broadband privacy proceeding. During the meeting, we discussed the benefits of a sensitivity-based approach to privacy and data security. We further encouraged the FCC to follow the FTC's approach with respect to de-identified data.

We also explained why broadband providers should be permitted to market their services to their own customers without first obtaining opt-in or opt-out consent. Specifically, we described how customers reasonably assume that they will receive marketing from businesses that they purchase service from and that businesses will develop new products, services, and marketing campaigns based on how customers use their service. If consumers do not want to receive such marketing, they may opt-out of marketing using other mechanisms, such as companies' Do Not Call lists.

In addition, we encouraged the Commission to allow providers to share information with affiliates provided such affiliates honor consumers' choices concerning use of their information. We explained that broadband providers often operate under complex corporate structures that rely on affiliates to handle different but related tasks. Regardless of whether customer data is held by the entity providing service or an affiliate, the corporation as a whole has the obligation and incentive to protect the data and to use it according to the customer's choices.

We also talked about the benefits of harmonizing the privacy rules that would apply to both voice and broadband telecommunications services and how different rules for voice and broadband services will cause confusion for both consumers and providers. We encouraged the Commission to allow business customers to bind themselves to alternative privacy and data security regimes as their privacy and data security needs may differ from those of consumers.

Finally, we noted that the Commission cannot—and should not—prohibit arbitration clauses in consumer contracts. As extensively detailed in Verizon's Comments and Reply

Marlene H. Dortch

October 21, 2016

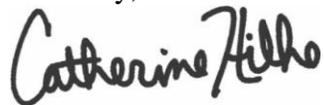
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Comments in this proceeding,¹ the law clearly allows arbitration clauses in consumer contracts. The Federal Arbitration Act provides that any “written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”² Nothing in the Communications Act or any other statute authorizes the Commission to supersede Congress’ policy judgment favoring arbitration clauses.³

In addition, prohibiting arbitration clauses would harm consumers. Multiple studies have found that consumers obtain relief in arbitration at rates higher than they do in court,⁴ while being less costly and time-consuming for consumers than litigation.⁵ Indeed, many companies — including Verizon — have voluntarily adopted a set of best practices designed to make arbitration even more consumer-friendly.⁶ In light of this evidence, there simply is no basis for the Commission to prohibit arbitration clauses. Regardless, the FCC need not address this issue at this time in a proceeding that is about privacy and data security, not consumer disputes or customer contracts.

Will Johnson made these arbitration clause arguments in a separate phone conversation with Matt DelNero of the Wireline Competition Bureau on October 20, 2016.

Sincerely,



cc: Claude Aiken
Matt DelNero

¹ Verizon Comments at 70-80; Verizon Reply Comments at 38-45.

² 9 U.S.C. § 2.

³ *See, e.g.*, Verizon Comments at 71-75.

⁴ *See* Verizon Comments at 76-78.

⁵ *See* Verizon Comments at 78-79.

⁶ *See, e.g.*, Letter from David Hirschmann & Lisa A. Rickard, U.S. Chamber of Commerce, to Monica Jackson, Consumer Financial Protection Bureau, at 30-38 (Dec. 11, 2013), http://www.instituteforlegalreform.com/uploads/sites/1/2013_12.11_CFPB_-_arbitration_cover_letter.pdf (summarizing these efforts); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 351-52 (2011) (noting consumer-friendly aspects of AT&T Mobility arbitration agreement at issue).